

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 178 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JOSHI KANCHANLAL VISHWANATH

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner
MR POOJARI, AGP.for Respondent No. 1
NOTICE SERVED on Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/09/2000

ORAL JUDGEMENT

The appellant who filed Regular Civil Suit
No.1346 of 1975 in the Court of 2nd Jt.Civil Judge (S.D),

Vadodara could not succeed as his suit came to be dismissed on 26.11.1978. He therefore, filed Regular Civil Appeal No. 97 of 1979 in the District Court at Vadodara, wherein also he failed on 17.11.1981. Being aggrieved by such judgment and decrees he, the original plaintiff has preferred this appeal challenging the legality and validity of the decrees passed by both the lower Courts.

2. The facts leading the appellant to prefer the appeal briefly stated are that he was serving as Sales Tax Officer at Vadodara. He was born at Motikharol in Karjan taluka of Vadodara district. His birth-date is 11.03.1919, but in the matriculation certificate, his birth-date is either by mistake or inadvertence mentioned to be 30th July, 1917. The birth-date mentioned in the matriculation certificate came to be reflected in his service book. When his service book shows that his birth date is 30-7-1917, he had to retire on 30-7-1975. On inquiry he could know that his true and correct birth-date was 11-03-1919, and so he could not be made to retire on 30-07-1975. Hence, he wanted to get necessary correction made in his service book qua his birth-date recorded incorrectly, but owing to Rule 171 of the Bombay Civil Service Rules, it was not possible to make the correction. As per the Government Resolution No.RTR 1073/1215-1K dated 16-02-1974, the birth-date if at all in the service record is incorrectly recorded, the same can be corrected lateron, but the Sales-Tax Commissioner on being requested to correct his birth-date, refused to do so. He therefore, preferred Regular Civil Suit No. 1346 of 1975 in the Court of Civil Judge (S.D), Vadodara for necessary relief so as to have the birth-date corrected in the service book. The suit was assigned to the then learned 2nd. Joint Civil Judge (S.D), Vadodara for hearing and disposal in accordance with law. After framing the issues, recording the evidence, and hearing the parties, the then learned 2nd Jt.Civil Judge (S.D), Vadodara found that the appellant had failed to establish the case which he was asserting and his prayer for directing the respondent to correct his birth-date was required to be turned down. He therefore dismissed the suit. On 26-10-1978 feeling aggrieved by such judgment and decree, he preferred Regular Civil Appeal No.97 of 1979 in the District Court at Vadodara. The appeal was assigned to the then learned Joint District Judge, Vadodara, who after hearing the parties dismissed the appeal on 17-11-1981 fully agreeing with the learned Civil Judge (S.D), Vadodara. It is against that judgment and decree the present Second Appeal is filed.

3. Assailing the judgment and decree passed by both the Courts below, the learned Advocate submits that the resolution of the Government dated 16.02.1974 produced at Ex.30 is not correctly interpreted. It's not that whatever birth-date is recorded in service record at the time of the entry in the services, the same shall prevail and govern the issue. Even later on also if any mistake regarding birth-date is found out, the same can be corrected in consonance with the date mentioned in the birth certificate. The higher authority in this case, therefore, ought to have corrected the birth-date as per the date in the birth certificate, but as that was not done, the lower Court ought to have set the things right by correct interpretation of the Government Resolution dated 16-04-1979. The lower Court ought to have also borne in mind the fact that when his elder sister was born on 26-04-1917 his birth-date could never be 30-07-1917. This fact was sufficient to hold that within three months, birth of the next child was not possible, and so his correct birth-date must be 11-03-1919 for which he was seeking necessary correction. When such facts are also incorrectly appreciated it would be just and proper for this Court to interfere with the judgments and decrees passed by both the Courts below.

4. The only point that arises for consideration is whether a person, while joining the services, comes forward with his particular birth-date and causes his Department/Office to accordingly post necessary entry regarding his birth-date in his service book, can later on pray for correction of his birth-date noted in his service record so as to push the date of retirement far off the day on which his retirement is to come into being as per the birth-date already noted at the time of his entry in the service book, and have more period of services and more benefits, as well as advantages. Similar question arose before the Supreme Court in the case of Union of India Vs. Ram Sua Sharma reported in JT 1996(3) S.C.72, wherein it is laid down that no court or tribunal at the belated stage entertain a claim for correction of the date of birth entered in the service records. In the case of Visakhapatnam Dock Labour Board Vs. E. Atchanna and Others, reported in (1996) 2 SCC 484, it is also held that if the employee prays for alteration of his birth date after a long service of 26 to 30 years at the time of his retirement interim relief or any other direction cannot be granted. In the case of Chief Medical Officer Vs. Khadeer Khadri, reported in (1995) 2 SCC 82, what is laid down is that if after

inordinate delay the correction in the birth date is sought and that too beyond the statutory time limit, the rejection of prayer by the department must be upheld. Any role to get the birth date corrected when the retirement is approaching must be frowned upon. In view of such pronouncements of the Apex Court, I see no justification to interfere with the decisions rendered by both the Courts below. The appellant joined the services in 1947 making the statement that his birth-date was 11th March, 1919 and caused his Department to accept the same and act on that basis in all respects. On 19-03-1974 after about 27 years, and when his retirement was to eventuate after about three years, he, however, in order to gain more remaining in the services, engineered a case, and made an attempt to get his date of birth recorded in his service-records corrected shedding crocodile tears. In view of this fact he is now estopped from asserting a different date than what he initially declared, and causing the Department to act accordingly. Further, any attempt made, to get the birth-date corrected when the retirement is in the offing or to eventuate shortly i.e. within 2-3 years, must be frowned upon.

5. As per Rule 3 of the Bombay Civil Service Rules request for alteration of the date of birth should be made before the preparation of the service book and in any event not after completion of probation period or five years continuous service whichever is earlier. In case, when there is no probation period such request should not be entertained after completion of five years' continuous service. Thereafter, if the Government is satisfied that there was a bonafide clerical mistake in posting the entry in service book the same can be corrected. In the case on hand it is not a case of the appellant that there was bonafide clerical error of the concerned Clerk while posting the entry in the service book, and therefore, at this stage, alteration in the birth date cannot be made. Further, he has already completed the probation period, and certainly period of five years service. He cannot now avail of the benefit of the Rule as he does not satisfy its requirements. It is hence, not open to the appellant to pray for any alteration in the birth date recorded in his service book.

6. A person, intending to have maximum possible benefits and gains unjustly by playing mischief or adopting dishonest way, must suffer the consequences of his mischief or dishonesty. Any attempt later on made to avoid ensuing consequences of his dishonesty must be

frowned upon.

7. For the aforesaid reasons the appeal being devoid of merits is liable to be dismissed and is accordingly dismissed with costs. No order as to costs.

m.m.bhatt